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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1197

MIAMI BRIDGE COMPANY,

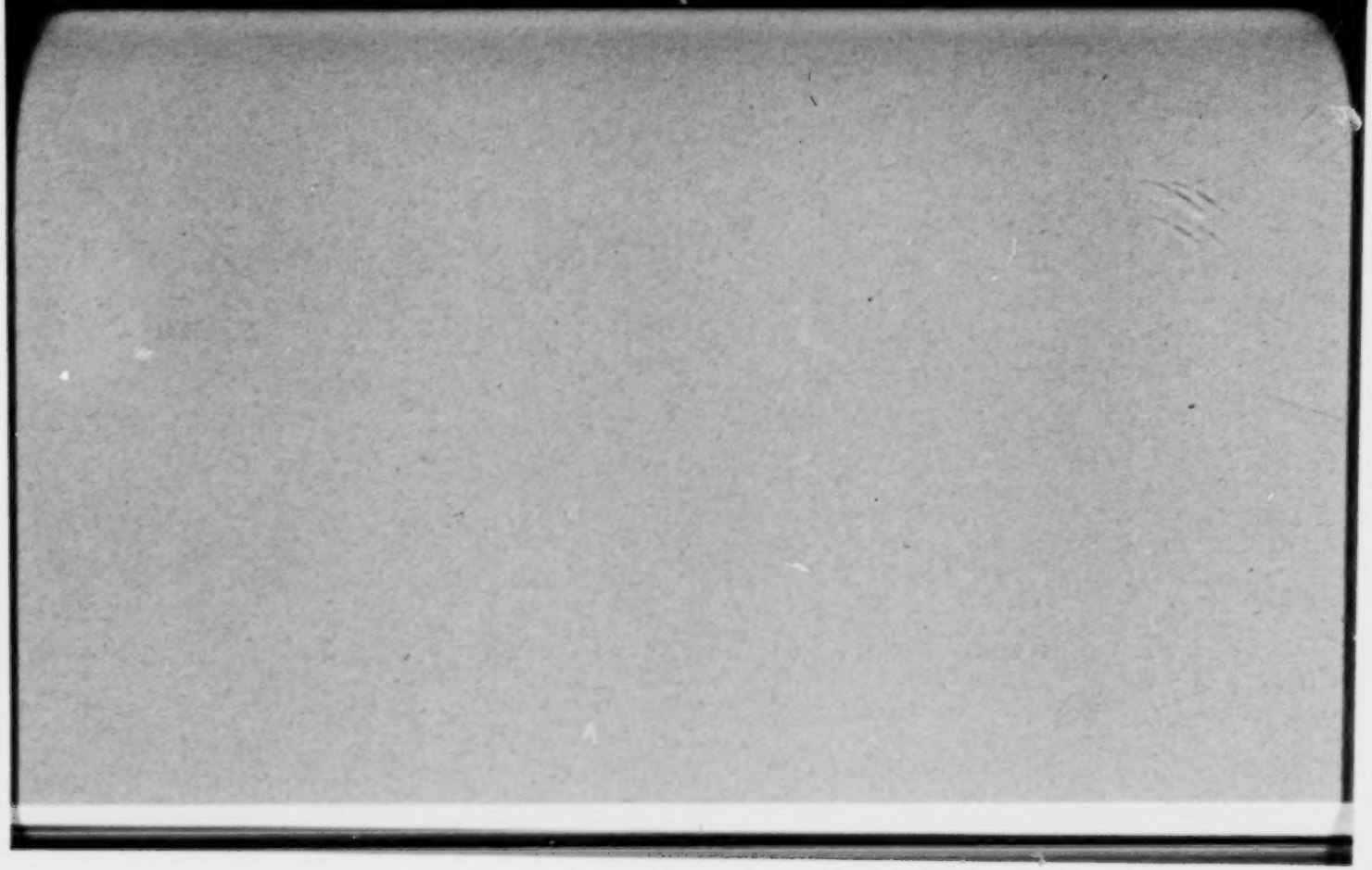
Petitioner,

vs.

RAILROAD COMMISSION OF THE STATE OF FLORIDA

BRIEF OF AMICI CURIAE IN OPPOSITION TO GRANTING WRIT OF CERTIORARI

ROBERT H. ANDERSON,
ALFRED L. MCCARTHY,
Amici Curiae.



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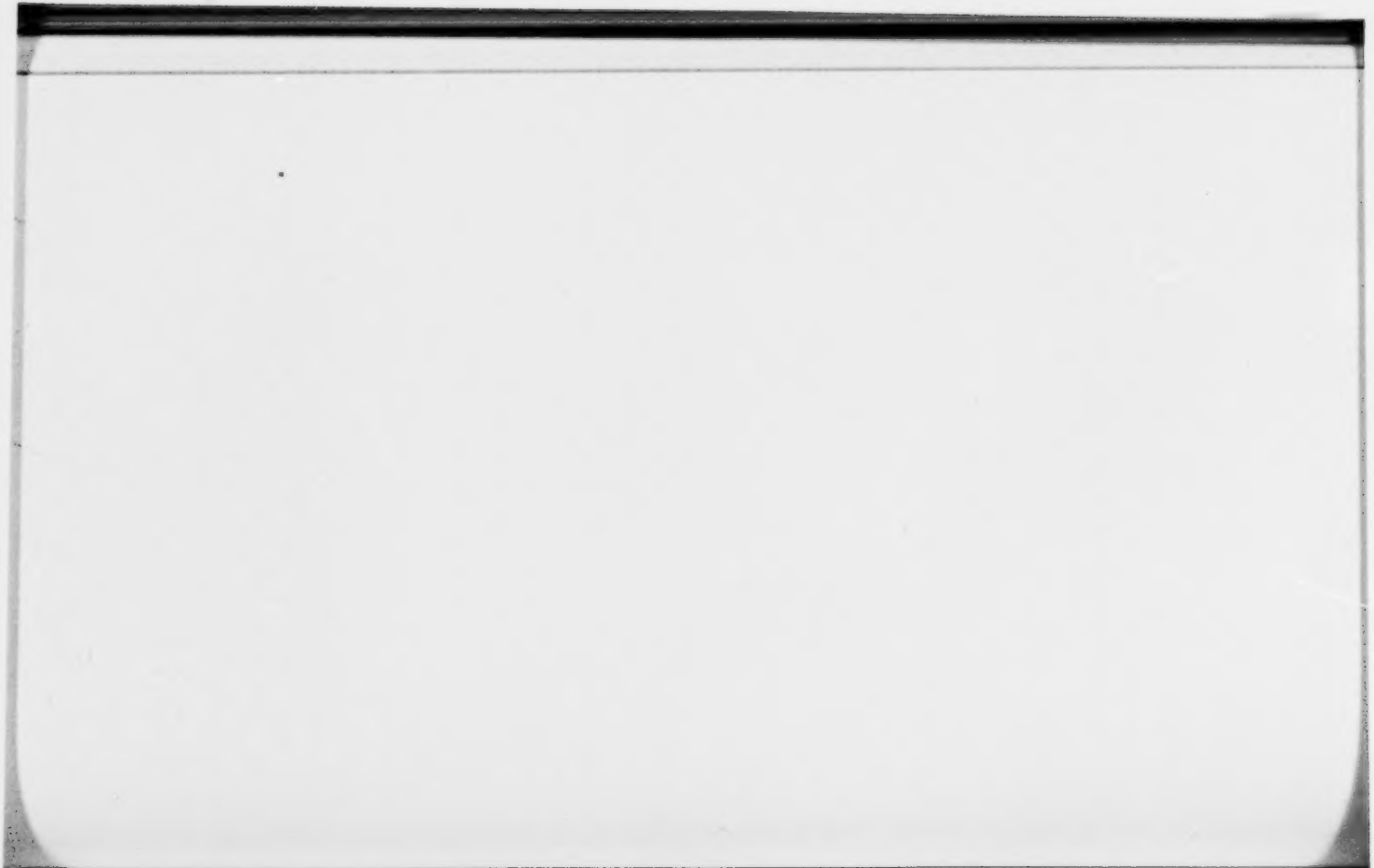

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No. 1197

MIAMI BRIDGE COMPANY,

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vs.

RAILROAD COMMISSION OF THE STATE OF FLORIDA

BRIEF OF ROBERT H. ANDERSON AND ALFRED L. MCCARTHY, AS AMICI CURIAE, IN OPPOSITION TO THE GRANTING OF THE WRIT OF CERTIORARI.

This case involves no constitutional questions that this Court has not decided adversely to the contentions of the petitioner.

Succinctly stated, the only question is:

> Where the Constitution of a State invests the Legislature with full power to pass laws for the correction of abuses and to prevent unjust discrimination and excessive charges by corporations performing services of a public nature, may previously unregulated public utilities, operating under valid franchises fixing maximum rates, be placed under the jurisdiction of a regulatory commission?

The Supreme Court of Florida answered this question in the affirmative [1] (Tr. 49-61).

Applicable Provisions of the Constitution and Statutes of Florida

The Florida Constitution contains the following provision that has been in effect since its adoption in 1885:

ARTICLE XVI

> "Section 30.—The Legislature is invested with full power to pass laws for the correction of abuses and to prevent unjust discrimination and excessive charges [2] by persons and corporations engaged as common carriers in transporting persons and property, or performing other services of a public nature; and shall provide for enforcing such laws by adequate penalties or forfeitures."

The Florida Legislature of 1925 passed a Special Act (Chapter 10497) authorizing the construction, maintenance and operation of roadways, bridges, viaducts and fills over the waters and submerged lands of Bay Biscayne in Dade County, Florida, granting franchises to those complying with its provisions, authorizing tolls to be collected by the grantees and fixing maximum tolls to be charged.[3]

Prior to 1943 the Railroad Commission of Florida had statutory authority to regulate tolls, charges, uses, etc. of all toll bridges [4] in the State more than three and a half

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[1] Miami Bridge Company vs. Railroad Commission of the State of Florida, 20 So. 2d 356.

[2] It will be noted that the legislature is authorized to prevent "excessive charges" as well as "unjust discrimination."

[3] Petitioner claims its rights under this Special Act, a copy of which is attached to the petition (p. 10 et seq.).

[4] The statute excepted toll bridges constructed by counties and political subdivisions or operating under terminable franchises from county commissioners. The exception is not involved in this case.

miles in length [5] (§ 347.08, Fla. Stat. 1941). This had been the law in Florida since 1927.

The Legislature of 1943 enacted Chapter 21743 amending the General Statute (§ 347.08 *supra*) the effect of which was to subject all toll bridges,[5] including the petitioner's, to the regulatory powers of the Railroad Commission of Florida.

History of the Case

Petitioner, Miami Bridge Company, operates a toll bridge known as "Venetian Way" over and across Bay Biscayne and between the cities of Miami and Miami Beach in Dade County, Florida.

The Miami Beach Railway Company, as its name implies, formerly operated trolley cars between Miami and Miami Beach, Florida. Many years ago it substituted buses for the street cars. It is the most important means of transportation between the two cities.

In 1941 the bus company found its facilities greatly overtaxed. This condition was accentuated by the war. It sought to operate some of its buses over the Venetian Way as this afforded a much better and more economical route, thus saving gasoline, tires and time. The Bridge Company refused to permit the buses to be operated at any price and took the position that it could not be compelled to do so. Thereupon the Railway Company brought a suit to compel Miami Bridge Company to permit the buses to be operated at reasonable rates. The Chancellor issued a mandatory injunction authorizing operation of the buses on the causeway, upon the giving of a substantial bond, and appointed a master to ascertain what tolls were reasonable.

The Supreme Court of Florida affirmed this ruling in so far as it upheld the right of the bus company to operate the

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[5] Petitioner's toll bridge involved in this case is less than 3½ miles in length.

buses and declared that the Venetian Way was a public utility. It denied the right of the Chancellor to fix the rates and said that, inasmuch as the causeway was not subject to the jurisdiction of any regulatory body, it had the primary right to fix its own rates subject to attack in the courts for unreasonableness.[6]

At this time all toll bridges in the State of Florida over three and one-half miles in length were under the jurisdiction of the Florida Railroad Commission which had the power to fix their rates, tolls, charges and practices. Upon the announcement of the court's decision the Legislature removed the limitation and put all toll bridges under the Railroad Commission's jurisdiction.

After the passage of the Act placing the Venetian Way (with other toll bridges) under the jurisdiction of the Railroad Commission, The Miami Beach Railway Company filed a petition with that body alleging that the rates fixed by the causeway company were unreasonable, arbitrary, excessive and extortionate, and asked the Commission to fix just, reasonable and non-discriminatory rates for buses operating over the causeway. In spite of the Bridge Company's insistence that it was not subject to regulation by any board, body or commission and, in view of its franchise, that it could not be put under the jurisdiction of any regulatory body, the Florida Railroad Commission denied its pleas, assumed jurisdiction of the cause and set it for hearing.

There is no statutory appeal provided in Florida from orders of the Railroad Commission of this kind. Therefore the Miami Bridge Company sought a writ of certiorari from the Supreme Court of Florida to review the order of the Railroad Commission on constitutional grounds. In such cases, by a long line of decisions in Florida, the only question

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[6] Miami Bridge Company vs. The Miami Beach Railway Company (1943), 152 Fla. 458, 12 So. 2d 438.

reviewable by the court is whether or not the Commission proceeded in accordance with essential requirements of law and did not deny constitutional rights.[7]

The Florida Supreme Court held that no such showing had been made and denied the petition. In so doing, the court says (Tr. 60-61):

> "It is to be presumed that the hearing before the State Railroad Commission will proceed according to the essential requirements of the law. If a conclusion or order is by the Commission made or reached that fails to conform to the essential requirements of the law, then the error, if any, may be corrected in an appropriate proceeding."

From this it appears that the petitioner's application here is premature, to say the least of it, as the Florida Supreme Court clearly held that no rights to which it is entitled have been denied.

On the Merits

But to avoid any technical grounds and to meet the issue squarely, this question is posed:

> Assuming that the Legislature of Florida granted the petitioner an exclusive franchise permitting it to fix maximum rates for vehicles operating over its causeway, did a subsequent statute authorizing the Florida Railroad Commission to prescribe reasonable rates for such vehicles invade the petitioner's vested rights under its franchise or deprive it of due process of law or deny to it the equal protection of the laws?

It is certainly conceded that a franchise is a contract under which the grantee acquires vested rights and that those

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[7] Florida East Coast Railway Company vs. State, 79 Fla. 66, 83 So. 708;
Florida Motor Lines, Inc. vs. Railroad Commission, 101 Fla. 1018, 132 So. 851;
Atlantic Coast Line Railroad Company vs. Railroad Commission, 149 Fla. 245, 5 So. 2d 708.

rights are protected by the Constitution of Florida and the Constitution the United States.

But when the grantee of this franchise accepted it, it did so charged with knowledge that the Constitution of Florida provided:

> "The Legislature is invested with full power to pass laws for the correction of abuses and to prevent unjust discrimination and excessive charges by persons and corporations engaged as common carriers in transporting persons and property or performing other services of a public nature and shall provide for enforcing such laws by adequate penalties or foreitures."

The Miami Bridge Company accepted its franchise not only with full knowledge of the above-quoted constitutional provision but of the fact that the Supreme Court of Florida had held:

> "The section was inserted in response to a popular demand for some provision upon the subject. It does not grant the legislature a power. It expressly recognizes a power and declares that it does exist. The provision is a specified declaration that the power exists in the legislature to be exercised *at any time*, and because of its importance, and possibly to guard against the misinterpretations of other provisions to impair or deny the power, it was specifically mentioned and declared in the constitution. The power mentioned in this section is full power; *a continuing, ever present power*. Being irrevocably vested by this section, the legislature can not divest itself of it."
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> * * * * * * *
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> "The section not only becomes a part of every such contract, as much so as if written therein, but by implication it denies the authority of the legislature to bind itself either by a contract of its own making, or one made by a municipality under its authorization, not to exercise the power thereby recognized *whenever*

in its wisdom it should think necessary so to do." (Italics ours.)

City of Tampa v. *Tampa Waterworks Co.* (1903), 45 Fla. 600, 625, 34 So. 631, 639.

And the Miami Bridge Company accepted its franchise with full knowledge that the Supreme Court of the United States, in affirming the *Tampa Waterworks* case, said:

"The decision of a state court that a municipality could not, by a contract with a water company, deprive itself of the right to establish reasonable maximum water rates, conformably to a state statute adopted to carry into effect a provision of the state Constitution in force when the contract was made, which invests the legislature with full power to pass laws to correct abuses and prevent excessive charges by 'persons and corporations engaged as common carriers in transporting persons and property, or performing other services of a public nature,' and declares that the legislature 'shall provide for enforcing such laws by adequate penalties or forfeitures,' is not so clearly erroneous as to require reversal on a writ of error from the Supreme Court of the United States."

Tampa Waterworks Company v. *City of Tampa* (1905), 199 U. S. 241, 26 S. Ct. 23, 50 L. Ed. 170.

Another case directly in point is *American Toll Bridge Company* v. *Railroad Commission of California* (1938), 307 U. S. 486, 59 S. Ct. 948, 83 L. Ed. 1414, where the same contention was made and rejected.

Petitioner apparently places much reliance in § 347.20, Florida Statutes 1941, which provides that nothing in the chapter dealing with toll bridges shall affect or impair any right or privilege belonging to any individual or corporation by virtue of any law of this State. It is difficult to see how this affects the question. It neither adds to nor detracts from the petitioner's rights. It is merely an empty legislative declaration because the constitution prohibited

anything in the statute from affecting or impairing any vested rights belonging to the petitioner. Neither could this section operate to withdraw from the legislature its constitutional right to regulate public utilities. It has been admitted that the petitioner's franchise is a contract, the obligation of which is protected from impairment by the organic law. But the contract was made subject to the reserved powers of the State to regulate utilities, which could not be waived or bartered away. The statute is of no more force than the contract. If the State's reserve powers cannot be contracted away, they cannot be divested by a statute.

Respectfully,

ROBERT H. ANDERSON,
ALFRED L. MCCARTHY,
Amici Curiae.

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